(4)

No. 08-73

FILED
SEP 22 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the Supreme Court of the United States

CONNIE C. RESHARD,

PETITIONER,

VERSUS

MAIN LINE HOSPITALS INCORPORATED d.b.a./a.k.a., MAIN LINE HEALTH AND THE LANKENAU HOSPITAL, DR. MICHAEL J. GLASSNER, DR. JOHN F. SCHILLING, MARK E. SCOTT, D.O., DR. KIMBERLY M. LENHARDT, DR. THOMAS J. MEYER, PULMONOLOGY ASSOCIATES, INC., AND DR. GEOFFREY P. TREMBLAY,

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

REPLY
TO BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

CONNIE C. RESHARD,
PETITIONER, *PRO SE*
1435 4TH Street, SW
Washington, DC 20024
202-554-9222

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David F. Herr, Roger S. Haydock, Jeffrey W. Stempel, *Motion Practice*, § 16.04 (B), p. 16-67 (Aspen Publishers Online 4th ed. 2001) 5

Steinman, Adam, "Reinventing Appellate Jurisdiction" *Boston College Law Review*, Vol. 48, 2007, p.1237 7

I. SUMMARY

Petitioner believes that her petition for a *writ of certiorari* should be granted and the information contained in her Reply supports or otherwise explains her conduct in this case.

It is compelling that the majority of judges in federal courts do not support the dismissal of a case for not attending proceedings ordered by the court under circumstances presented in this case for a failure to prosecute. Some legal commentators believe that the requirements of appellate review under the collateral order doctrine are unclear or not uniformly administered in the federal judiciary. Some legal commentators recommend the use of the All Writs Act, *e.g.*, *writ of mandamus* device for obtaining appellate review during the course of the case, especially in the area of discovery.

I believe my use of the device is not an example of a delay tactic. Petitioner acted prudently when she sought review under the All Writs Act regarding discovery requests from Dr. Michael Glassner's counsel regarding for example medical records at Lankenau Hospital, records whose existence had not been identified in the medical records given to her. ***Emphasis Added.*** Therefore, she had a right to review them first in order to determine whether there was information requiring legal non-disclosure even to the parties in the case.

Petitioner also acted reasonably and in good faith regarding two major issues related to the tenure of Senior Judge Robert F. Kelly in the above

styled case. If a patient with a clinical history seeks medical treatment and that fact is known to the district court and to the parties prior to another party's requirement to attend her deposition, it seems reasonable that the party is unable for medical reasons to attend the deposition or to provide her status to the district court and to the other parties contemporaneously. She did the best she could and believed that she would be afforded some degree of deference under the circumstances.

II. A CASE SHOULD NOT AUTOMATICALLY BE DISMISSED FOR MISSING A HEARING

The district court dismissed the case under Rule 41(b), Fed. R. Civ. P. for failure to prosecute, finding that petitioner acted intentionally in bad faith or intentionally used delay devices. This is certainly not true in this case. According to some commentators, a claim of failure to prosecute under *Link v. Wabash Railroad Company*, 370 U.S. 626 (1962) is not automatic. *See* David F. Herr, Roger S. Haydock, Jeffrey W. Stempel, *Motion Practice*, § 16.04 (B), pp. 16-67 (Aspen Publishers Online 4th ed. 2001).

> "Lower Courts interpreting the case have concluded that missing a court proceeding, even without an acceptable excuse, does not in and of itself justify dismissal even though the nonattendance violated at least one court order as well."

Since the entire process depends on balancing the need for orderly disposition of the case, rarely are cases similar to this case dismissed for failure to prosecute. *Id.* I believe that the reason for a lack of

an opinion of this nature is that detailed opinions are not issued in the district court to dispose of such cases and such cases are not appealed.

The fact that petitioner believed that there was putative jurisdiction under the collateral order doctrine should be viewed as an act of good faith and not an act used as a delay tactic. This is the case presented, even though the United States Court of Appeals for the Third Circuit did not agree with petitioner's interlocutory appeal regarding the right of a *pro se* attorney litigant to seek immediate appellate review. The right to proceed *pro se* is a product of common law dating to the early days of this country and English common law going back centuries. It is codified under what is now Title 28, Section 1654 of the United States Code as one of the first judicial acts of our Congress under the new Constitution in 1789 in the First Judiciary Act. Section 35 of the 1789 Act stated:

> "That in all courts of the United States, the parties may plead and manage their own causes personally or by assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein."

By assistance as in the current statue does not mean exclusively but could be interpreted inclusively to include oneself and third–party counsel as in jointly. Section 1654 confers a high standing in our system of judicial governance and Constitutional protections.

By appealing the issue surrounding my deposition including the appearance of counsel by *pro hac vice* to provide assistance to a *pro se* litigant

and by the district court judge's prior ruling indicating that the use of counsel would be permitted provided that he or she were admitted to practice before the district court, petitioner should have been protected from a determination that she acted in bad faith or that she acted to delay the proceedings, in a subsequent order of dismissal for failure to prosecute the case.

Some commentators advocate changing the current system noting that the All Writ Act could be used for appellate review of certain interlocutory orders and that the interpretation of the collateral order doctrine has mixed results. *See*, Steinman, Adam, "Reinventing Appellate Jurisdiction" *Boston College Law Review*, Vol. 48, 2007, p.1237. Clearly there is support that the deposition issue is not and should not be considered an act of bad faith by acting to protect oneself with the assistance of counsel at the March 31, 2003 deposition as well as due to illness for her scheduled deposition on February 27, 2003.[1]

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[1] It is documented that petitioner has a clinical history that includes serious medical issues. I felt ill including chest pain and wanted to get checked by a doctor **before** I could feel safe driving to Philadelphia for my deposition early the next morning on February 27, 2003.

This is reasonable behavior in my view and I thought that I would have been given the benefit of the doubt because I had notified both Senior Judge Robert F. Kelly and the parties that I was experiencing a medical episode of some level. I went to the hospital on February 26, 2003 and was admitted by my doctors. My doctors made the decision such after examination and after reviewing my clinical history dating back to April 2000 when I had to be admitted to Georgetown for about three-weeks subsequent to my discharge from Lankenau Hospital on April 18, 2000.

Petitioner has also been criticized for using the All Writs Act to resolve discovery issues, a device that is not inconsistent with the judicial and statutory policy against piece-meal judicial administration. Petitioner could have disclosed information that could be used to impact future case strategy by defense counsel at a significant level. It could be argued that immediate discretionary appellate review either by the All Writs Act or collateral order review would be judicially efficient and fair to the parties by eliminating an unfair advantage to the defense counsel or by reducing cost of an entire re-trial based on faulty premise that the status quo would be maintained when the effect of the new trial under the corrected rule of law occurs but the outcome has been sufficiently diminished in bringing about true justice as well as the tenet that "justice delayed is justice denied."

III. PETITIONER ACTED IN GOOD FAITH

In all respects, I acted in good faith. For example regarding my deposition scheduled for March 31, 2003, I took the necessary steps to obtain counsel during the 11 or so days from the March 18, 2003 teleconference call between the parties and Senior Judge Robert F. Kelly when my deposition was set for March 31, 2003 and Dr. Kimberly

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My treatment at Lankenau Hospital lead to issues raised in this case. Doctors at Georgetown made a determination to admit me as a patient, evidenced by my wrist identification bracelet. *See Hospital Patient Band Indicating Admission On February 26, 2003,* Reply App. at 5.

My doctors discharged me late afternoon on February 27, 2003. I felt really ill after the test given me during the hospital stay and went to bed when I arrived home. I stayed in bed for several days thereafter. I did the best I could given the manner in which the facts unfolded.

Lenhardt's deposition was scheduled for March 20, 2003.

I met with Hughie Hunt later that afternoon on March 27, 2003 at his office in College Park, Maryland and prepared a motion for him to appear *pro hac vice*. Later that same day, I filed the motion via next day morning delivery for March 28, 2003, by 10:00am via Federal Express service. *See, Motion to Appear Pro Hac Vice, March 27, 2003* at Reply App. 1-4.

On Friday, March 28, 2003, I verified that delivery occurred at about 9:16am. Later that day, Hughie Hunt telephoned me about the status of the motion. I made a teleconference call with Mr. Hughie Hunt to the following telephone numbers on Friday, March 28, 2003: first call was made to 267-299-7007, Joseph Lavin, the case manager for *Reshard v. Lankenau Hospital, et al.*, Case No. 02cv1787; the second call was made to 215-597-0736, Senior Judge Robert F. Kelly's chamber, the judge of record at that time. Both numbers appeared on my telephone bill for 202-484-7002. *See, Telephone Bill Dated April 16, 2003* at Reply App-4.

I made every effort to facilitate the processing of the motion prior to my deposition on Monday, March 31, 2003. I followed what I believed to be the necessary action to preserve the status quo in the case while staying within the rules of acceptable conduct and decorum. For example, Senior Judge Kelly and I may not see the facts in the same manner. However, I can only present the facts as I believe they occurred, based upon my knowledge and belief.

IV. CONCLUSION

Petitioner urges the Court to grant her petition and issue a *writ of certiorari*. The issues present areas of the law that are being treated differently among the Circuits. All of the issues presented in my view support judicial intervention by the Supreme Court of the United States.

Further, the discussion presented, in my view, demonstrates the level of integrity and decorum exemplified by petitioner that does not support findings that I acted to delay the case or that I acted in bad faith in handling any matter in this case.

APPENDIX

March 28, 2003 Motion To Appear Pro Hac Vice

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYYLVANIA

APPLICATION FORM FOR THOSE ATTORNEYS SEEKING TO PRACTICE IN THIS COURT PURSUANT TO LOCAL RULE OF CIVIL PROCEDURE 83.5.3(b)

I. APPLICANT'S STATEMENT

_____I, the undersigned, am an attorney who is not currently admitted to either the bar of this court or the bar of the Supreme Court of Pennsylvania, and I hereby apply for admission to practice in this court pursuant to Local Rule of Civil Procedure 83,5,2(b), and am submitting a check, number_____, for the $40.00 admission fee.

A. *I state that I am currently admitted to practice in the following state jurisdictions:*

Maryland, Admission date: 4/20/01, Attorney Identification Number: 15030.

Georgia, Admission date: 1/15/03, Attorney Identification Number: 442214

B. *I state that I am currently admitted to practice in the following federal jurisdictions:*

Maryland, Admission date: 4/20/01, Attorney Identification Number: 15030

District of Columbia, Admission date: 2/03/01, Attorney Identification Number: 15030

C. *I state that I am at present a member of the aforesaid bars in good standing, and that I will demean myself as an attorney of this court uprightly and according to law, and that I will support and defend the Constitution of the United States.*

/s/

Applicants Signature

Date: March 27/2003 (handwritten by Mr. Hughie Hunt)

APPLICANT'S OFFICE ADDRESS AND TELEPHONE NUMBER:

Kemet & Hunt PLLC
4920 Niagara Rd. Ste. 322
College Park, MD 20740
(301) 962-0888

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B. SPONSOR'S STATEMENT, MOTION AND CERTIFICATE

The undersigned member of the bar of the United States District Court for the Eastern District of Pennsylvania hereby moves for the admission of Hughie Hunt to practice in said court pursuant to Local Rule of Civil Procedure 83.5.2(b), and certify that I know (or after reasonable inquiry believe) that the applicant is a member in good standing of the above referenced state and federal courts and that the applicant's private and personal character is good. I certify that this application form was on this date mailed, with postage prepaid, to all interested counsel.

Sponsor's name: Connie Reshard, Sponsor's signature: /s/, Admission date: 11/18/87, Attorney Identification NO.: 50327.

SPONSOR'S OFFICE ADDRESS AND TELEPHONE NUMBER: 1101 3rd St., SW No. 812, Washington, DC 20024
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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL ACTION
Connie Reshard
v.
Main Line Hospitals, Inc. et. al
NO. 02CV1787
CERTIFICATE OF SERVICE
I declare under penalty of perjury that a copy of the application of Hughie Hunt Esquire, to practice in this court pursuant to Local Rule or Civil Procedure 83.5.2(b) and the relevant proposed Order which, if granted, would permit such practice in this court was mailed today with postage prepaid to: see attached.
Signature of Attorney: /s/
Name of Attorney: Hughie D. Hunt II (Handwritten)
Signature of Attorney: /s/
Name of Attorney: Connie C. Reshard
Date: 3/27/03 (Handwritten)
Sharon M. Reiss
Post & Schell, P.C.
1800 J.F.K Blvd, 19th Floor
Philadelphia, PA 19103
Daniel F. Ryan, III
O'Brien & Ryan, LLP
2250 Hickory Rd., Ste. 300
Plymouth Meeting, Pennsylvania 19462-1047
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Kilcoyne & Associates, LLC
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Plymouth Meeting, Pennsylvania 19462

George L. Young, Jr.
Young & McGilvery
1617 J.F.K. Blvd., Ste 1710
Suburban Station Building
Philadelphia, Pennsylvania 19103
F. James Gallo
Stahl & Delaurentis PC
One S. Broad St., Ste. 1830
Philadelphia, Pennsylvania 19107

Long Distance Telephone Bill From Verizon For Sprint Dated April16, 2003 for 202-484-7002

Sprint Invoice Account Summary (Redacted)
Calls from 202-484-7002 (Redacted)
No. 16, Date: 3/28, Time: 4:53pm, Place and Number Called: Phila, PA, 267-299-7007, Type: Direct, Rate: Day, Minutes: 2, Amount: $.14.
No. 17, Date: 3/28, Time: 4:55pm, Place and Number Called: Phila, PA, 215-597-0736, Type: Direct, Rate: Day, Minutes: 2, Amount: $.14.

March 29, 2003 Letter To Michael Kunz, Clerk Of The United District Court For The Eastern District Of Pennsylvania

March 29, 2003

Certified Mail and Return Receipt/Hand Delivery on March 31, 2003
Michael E. Kunz, Clerk,
United States District Court
Eastern District of Pennsylvania
601 Market Street
Philadelphia, PA 19106-1797

Re: Connie C. Reshard vs. The Lankenau Hospital, *et al, No. 02cv1787*

Dear Mr. Kunz:
On March 27, 2003, I submitted a Motion for *Pro Hac Vice* on behalf of Hughie Hunt to appear in the above styled case. See the Enclosed copy of the same. The document was delivered by Federal Express and signed for on March 28, 2003 at 9:16am. See the Enclosed Copy. A Motion for Authorization was already on file at docket no. 107 on March 25, 2003. Both Mr. Hunt and I attempted to walk the motion through as the hearing is scheduled for March 31, 2003. Yet based on telephone communications with staff including Joseph Lavin and a law clerk in Judge Kelly's chambers, the motion was no where to be found. Joseph Lavin said that [had to call] Judge Kelly 's chambers. One of Judge [Kelly]'s law clerk said they did not see it on the docket and had never heard of the Motion. You can see the situation is critical because I have been deprived of assistance of counsel in this matter for a legal proceeding. Please determine what happened. A copy of the last page of a PACER report shows that the Motion was not docketed. Please correct this situation immediately. How could this have happened?
Respectfully yours,
Connie C. Reshard
CCR/ccr
Enclosures (omitted here)
cc: The Honorable James T. Giles, Chief Judge
Daniel Ryan
J. Gallo
Sharon Reiss
Kyle Thompson

George Young

April 3, 2003 Facsimile To Hughie Hunt

April 3, 2003

Via Facsimile
Mr. Hughie Hunt
Kemet & Hunt PLLC
4920 Niagara Road, Suite 322
College Park, MD 20740
Re: Connie Reshard v. Lankenau Hospital, et al.,
No. 02-Civ-1787
Dear Mr. Hunt:
[Redacted]
Also, I wrote the clerk of the district court and the chief judge of the district court, advising them that the application for your appearance *pro hac vice* was received at [9:16am] on March 28, 2003. As you are aware based on our conference call to the Court on March 28, 2003, the motion was not docketed. J. Lavin said the judge had it and the judge's clerk said that they had never heard of it. The motion is now docketed as of April 1, 2003.
Sincerely,
/s/
Connie Reshard, Esq.
Enclosure
Cc: File
Fax
To: Hughie Hunt
From: C. Cornelia Reshard, Esq.
Date: April 3, 2003
Fax: 301-542-0005
Phone: 301-982-0888

Re: Reshard v. Lankenau, et al., 02cv1787
See attached letter regarding the taking of Connie Reshard's deposition.
Fax Confirmation
Date Apr 3
Time 7:13am
Type Fax Sent
Identification 10108111-301-342-0005
Duration 2:20
Pages 5
Result OK

February 26, 2003 Medical Arm Band Indicating Petitioner Admitted To Hospital

Reshard, Connie C
MRN Number: XXXX-707
Address: 1101 3rd St SW #812
Acct. Number: XXXX6703
Washington, DC 20024
DOB: 12/27/XXX
SSN: 263-XX-XXXX
Sex: F
Age: 55
Attending Physician: XXXXXX, Brendan R.
Admit Date: 02/26/03